

AMENDED IN SENATE AUGUST 21, 2002

AMENDED IN SENATE AUGUST 7, 2002

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 20, 2002

AMENDED IN SENATE JUNE 11, 2002

AMENDED IN ASSEMBLY MAY 7, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2436

**Introduced by Assembly Member Frommer
(Coauthors: Assembly Members Alquist and Cohn)**

February 21, 2002

An act to amend Section 1471 of the Civil Code, to add Section ~~57011~~ *57012* to the Health and Safety Code, and to amend Section 13307.1 of the Water Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2436, as amended, Frommer. Land use restrictions: cleanup and abatement.

(1) Existing law requires the Department of Toxic Substances Control to notify the planning and building department of each city, county, or regional council of governments of certain land use restrictions imposed upon property designated as hazardous waste

property or border zone property, sites listed for remedial or removal action, and remedial action land use controls. Existing law requires the planning department of those local agencies to file those restrictions and take specified actions and law authorizes the city, county, or regional council to assess a fee to cover the costs of taking those actions. Existing law requires the department to maintain this list of land use restrictions in a specified manner and to make the list available electronically, as specified.

This bill would require the California Environmental Protection Agency (Cal-EPA), the California Integrated Waste Management Board, the State Water Resources Control Board, each California regional water quality control board, and the department to maintain a list of all instruments and agreements restricting land uses imposed by those agencies and would require the list to provide specified information. The bill would require each agency to update its list, as specified, ~~and would authorize each agency to charge a property owner a fee for the reasonable costs of establishing and maintaining the lists.~~ The bill would require each agency to display the list on the agency's Web site and to make the list available to the public upon request.

The bill would require Cal-EPA to oversee the implementation of these requirements, including maintaining hyperlinks on its Web site to the individual lists, providing a search function to search and retrieve information from each of the individual lists, and creating and posting a list of all instruments and agreements restricting land uses that would be imposed by the bill with regard to Environmental Restriction covenants, as specified in ~~(2) (3)~~ below. ~~The bill would allow Cal-EPA to enter into a contract with a third party, in accordance with the State Contract Act, for purposes of establishing or maintaining, or both, the lists required by the bill.~~

(2) The Porter-Cologne Water Quality Control Act prohibits the state and the regional boards from considering cleanup or site closure proposals from the primary or active responsible discharger, issuing a closure letter, or making a determination that no further action is required, with respect to a site subject to a cleanup or abatement order, unless all current record owners of fee title to the site of the proposed action have been notified, as specified.

This bill would additionally, *if the state board or regional finds the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health or safety or the environment*, prohibit the state board or regional board from taking

those actions with regard to a site that is not an underground storage tank site, unless a land use restriction is recorded or required to be recorded; ~~if the board or regional board finds that the property is not suitable for unrestricted use.~~

(3) Existing law provides for the recording of an instrument containing an Environmental Restriction covenant made by an owner of land or by the grantee of land to do or refrain from doing an act that is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.

This bill would ~~require~~ *authorize* the office of the county recorder, if an instrument containing an Environmental Restriction covenant is recorded, to send a certified copy of the instrument to the Cal-EPA for posting on its Web site, for informational purposes only, pursuant to the requirements imposed by the bill, except as specified. The bill would provide the office of the county recorder and any of its employees immunity from any liability under any state law or in any action for damages if the office of the recorder does not send a certified copy of the instrument pursuant to the requirements of the bill.

The bill would authorize the office of the recorder to assess ~~a property owner~~ a reasonable fee, as determined by resolution of its governing body, to cover the costs of taking the action ~~required~~ *authorized* by the bill. ~~Since the bill would impose new requirements upon county recorders, the bill would create a state-mandated local program.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1471 of the Civil Code is amended to
- 2 read:
- 3 1471. (a) Notwithstanding Section 1468 or any other
- 4 provision of law, a covenant made by an owner of land or by the
- 5 grantee of land to do or refrain from doing some act on his or her



own land, which doing or refraining is expressed to be for the benefit of the covenantee, regardless of whether or not it is for the benefit of land owned by the covenantee, shall run with the land owned by or granted to the covenantor if all the following requirements are met:

(1) The land of the covenantor that is to be affected by the covenant is particularly described in the instrument containing the covenant.

(2) The successive owners of the land are expressed to be bound thereby for the benefit of the covenantee in the instrument containing the covenant.

(3) Each act that the owner or grantee will do or refrain from doing relates to the use of land and each act is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in Section 25260 of the Health and Safety Code.

(4) The instrument containing the covenant is recorded in the office of the recorder of each county in which the land or some portion thereof is situated and the instrument includes in its title the words: "Environmental Restriction."

(b) Except as provided by Section 1466 or as specifically provided in the instrument creating a covenant made pursuant to this section, the covenant shall be binding upon each successive owner, during his or her ownership, of any portion of the land affected thereby and upon each person having any interest therein derived through any owner thereof.

(c) If several persons are subject to the burden of a covenant recorded pursuant to this section, it shall be apportioned among them pursuant to Section 1467, except if only a portion of the land is so affected thereby, the apportionment shall be only among the several owners of that portion.

(d) This section shall apply to the mortgagee, trustee, or beneficiary of a mortgage or deed of trust upon the land or any part thereof while ~~but only while~~, *but only while*, he or she, in that capacity, is in possession thereof.

(e) (1) If an instrument containing a covenant is recorded pursuant to paragraph (4) of subdivision (a) as an "Environmental Restriction," in accordance with this section, the office of the recorder of the county ~~shall~~ *may* send a certified copy of the

1 instrument to the California Environmental Protection Agency,
2 for posting on its Web site, for informational purposes only,
3 pursuant to Section ~~57011~~ 57012 of the Health and Safety Code,
4 unless the instrument indicates that it is required by a board or
5 department specified in paragraphs (1) to (3), inclusive, of
6 subdivision ~~(e)~~ of Section ~~57011~~ (d) of Section 57012 of the Health
7 and Safety Code.

8 (2) Notwithstanding any provision of law, the office of the
9 recorder of the county and any of its employees shall not be subject
10 to any liability under any state law or in any action for damages if
11 the office of the recorder does not send a certified copy of the
12 instrument pursuant to paragraph (1).

13 (f) The office of the recorder of the county may assess a
14 ~~property owner~~ a reasonable fee, as determined by resolution of
15 its governing body, to cover the costs of taking the action ~~required~~
16 *authorized* by subdivision (e).

17 SEC. 2. Section ~~57011~~ 57012 is added to the Health and
18 Safety Code, to read:

19 ~~57011. (a) Each agency listed in subdivision (e) shall~~

20 57012. (a) *Each agency listed in subdivision (d) shall*
21 maintain a list of all instruments and agreements restricting land
22 uses imposed by that agency under Section 1471 of the Civil Code
23 or any provision of law that is administered by that agency, in
24 accordance with all of the following requirements:

25 (1) The list shall provide a description of location for each
26 property that, at a minimum, provides the street address and the
27 assessor's parcel number. If a street address or assessor's parcel
28 number is not available, or if a street address or assessor's parcel
29 number does not adequately describe the property affected by the
30 instrument or agreement restricting land use, the list shall include
31 a description of location or the location's geographic coordinates.

32 (2) The list shall provide a description of any restricted uses of
33 the property, contaminants known to be present, and any
34 remediation of the property, if known, that would be required to
35 allow for its unrestricted use. The recorded instrument or
36 agreement restricting land uses may be provided in lieu of the
37 description required by this paragraph.

38 (3) Each agency shall update its list as new instruments and
39 agreements restricting land uses are recorded and as instruments
40 and agreements restricting land uses on properties are changed.

~~(4) Each agency may charge a property owner a fee for the reasonable costs of establishing and maintaining the list required by this section, regardless of the time when the land use restriction is recorded. If the California Environmental Protection Agency determines that all or part of establishing and maintaining the list should be contracted to a third party, in accordance with this section, the fee charged the property owner may be used in whole or in part to pay all or part of the contractual charges for performing those functions.~~

(b) Each agency listed in subdivision ~~(e)~~ (d) shall display the list required under subdivision (a) on that agency's Web site, and shall make the list available to the public upon request.

(c) The California Environmental Protection Agency shall oversee the implementation of this section. In overseeing the implementation of this section, the California Environmental Protection Agency shall do all of the following:

(1) Maintain on its Web site hyperlinks to the individual lists posted pursuant to this section.

(2) Provide a search function that is able to search and retrieve information from each of the individual lists posted pursuant to this section.

(3) Create and post a list of all instruments and agreements restricting land uses that have been sent pursuant to subdivision (e) of Section 1471 of the Civil Code. The list created and posted pursuant to this paragraph shall meet all of the following requirements:

(A) The list shall identify the entity or jurisdiction that imposed the instrument or agreement restricting land uses.

(B) *The list shall include the information required by paragraphs (1) and (2) of subdivision (a).*

(C) The list shall be maintained for informational purposes only.

~~(E)~~

(D) The list shall contain a notation that information regarding the listed properties has been provided voluntarily, that the list is not all-inclusive, and that there may be additional sites where instruments or agreements restricting land uses have been imposed by other entities that have not been included on the list.

~~(d) The California Environmental Protection Agency may enter into a contract with a third party, in accordance with the State~~

~~Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code) for purposes of establishing or maintaining, or both, the lists required by this section.~~

~~(e)~~

(d) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The California Integrated Waste Management Board.

(2) The State Water Resources Control Board, and each California regional water quality control board.

(3) The Department of Toxic Substances Control.

SEC. 3. Section 13307.1 of the Water Code is amended to read:

13307.1. (a) The state board and the regional boards shall not consider cleanup or site closure proposals from the primary or active responsible discharger, issue a closure letter, or make a determination that no further action is required with respect to a site subject to a cleanup or abatement order pursuant to Section 13304, unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the state board or regional board.

(b) The state board and regional boards shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

(c) In addition to the requirements of subdivision (a), *if the state board or the regional board finds that the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health, safety or the environment, then the state board and the regional boards shall may not issue a closure letter, or make a determination that no further action is required, with respect to a site that is subject to a cleanup or abatement order pursuant to Section 13304 and that is not an underground storage tank site, if the state board or the regional board finds that the property is not suitable for unrestricted use, unless a land use tank site, unless a land* restriction is recorded or required to be recorded pursuant to Section 1471 of the Civil Code.

1 ~~SEC. 4.—No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~a local agency or school district has the authority to levy service~~
4 ~~charges, fees, or assessments sufficient to pay for the program or~~
5 ~~level of service mandated by this act, within the meaning of~~
6 ~~Section 17556 of the Government Code.~~

